Supreme Court of the United States

OCTOBER TERM, 1902.

No. 264.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND OTHERS, PETITIONERS,

against

W. N. COLER AND COMPANY, RESPONDENTS.

MEMORANDUM FILED BY JOHN F. DILLON, HARRY HUBBARD, CHARLES PRICE, AND AUG. H. PRICE, SOLICITORS FOR W. N. COLER, AND COMPANY, RESPONDENTS, ON MOTION TO ADVANCE.

Having reference to the motion to advance the above-entitled cause for hearing, we respectfully submit that the same should be heard at as early a day as the convenience of the court will admit, and we concur and join in the motion to advance filed by petitioners.

Joining in the motion to advance the suit for hearing, we do not, however, concur in the reasons for the same suggested by the defendants.

In the first place, the case of Commissioners *v.* Snuggs, 121 N. Car. Rep., 294, was a suit by the commissioners of the county of Stanly against its treasurer, to enjoin him from paying over, in performance of his duty as trustee, funds held by him as such for certain bondholders who had purchased the same from the county at the highest price, in open market, being the sum of six thousand dollars, a year's interest, set apart by him from all other moneys held as treasurer, the same having been collected from the people by the sheriff for that purpose alone; that the interest on the bonds had been paid regularly for four years, with no suggestion that they were not valid, legal bonds until the beginning of the suit of Commisssoners *v.* Snuggs, 121 N. Car.

That the bonds had been issued by the county, by and through this board of commissioners, in payment of its subscription, in the sum of one hundred thousand dollars, to the capital stock of the Yadkin Railroad Company, to aid in the building of its railroad through the said county of Stanly, which was duly built in strict accordance with the contract, and which had been in active and successful operation for several years before suit begun.

That the money held by the said trustee was collected for that purpose alone and belongs to the said bondholders, many of whom, scattered far and wide, are people who bought the same as investments and who are deprived of their interest money by said injunction.

That the University of North Carolina is the owner of six thousand dollars ($6,000) of the bonds, having bought the same as a good investment, and is awaiting, together with other holders of the same bonds, the result of this suit.

When the suit was commenced in the superior court of Stanly county the only ground alleged in the complaint to render the bonds invalid was the fact that certain acts of the legislature authorizing the issue of the bonds had not been enacted in accordance with the constitution, in the failure to enter the ayes and nays on all the readings of the bill upon the journals.

That when the case was argued in the superior court the recitals of the sections of the Code of North Carolina authorizing the issue of the bonds were not called to the attention of the court in connection with the leading case of Belo *v.* Commissioners of Forsyth, 76 N. Car. Rep., pages 487 and 490. If it had been, it is not to be supposed the court would have decided the case as it did. Indeed, it could not, unless the leading case upon municipal bonds in the State was overruled.

That the cases of Commissioners *v.* Call and Commissioners *v.* Payne, referred to in petitioners' brief, were begun in the State court in a similar manner to that of the Snuggs case, but the questions involved are different. There is no conflict, in the true sense, between the circuit court of appeals and the supreme court of North Carolina as to any of the cases referred to.

That the decision of the supreme court of North Carolina in the said case of Commissioners *v.* Snuggs, 121 N. Car. Rep., where no bondholder was a party, as said by Judge Simonton, was practically *ex parte* (page 53, printed Record, circuit court of appeals). "The parties, plaintiff and defendant, to this suit were practically one" (*ibid.*).

The court in the opinion filed, in construing the sections

of the Code of North Carolina, 1993, 1997, &c., expressly upheld the same as having been enacted in accordance with the provisions of the constitution. It was further held that the said sections were valid and a part of the statute law of the State; but the court said, it not appearing that the citizens of the county had an interest in the road, and that the same was not an unfinished road, the said sections did not apply.

As before said, in this memorandum the court was inadvertent to the recitals in the bonds, as it was also to the record of the board of commissioners issuing the same, to the effect that, "it appearing that the citizens of said county have an interest in said railroad," and that there was a railroad being constructed, and the conditions upon which payment was to be made, by installments, as such part, to wit, so many miles of the same, were constructed and completed.

And, as before stated in this paper, the leading case of Belo *v.* Commissioners, 76 N. Car. Rep., was not called to the attention of the court, in which it was held that the conditions upon which bonds are issued are for the *municipal authorities*, and not the *innocent bondholder*, to see performed.

The above shows there was no such conflict between the courts as that suggested in the case of Forsyth *v.* Hammond, 166 U. S. Rep., referred to in the petition of defendants.

In the opinion of Judge Goff, speaking for the circuit court of appeals, the decision is put upon the ground that the court was bound to follow and must be controlled by the decision of the State court construing the constitution and statutes of the State. This was in disregard of the rule laid down by Justice Harlan in the Wilkes County case, and,

indeed, by Judge Simonton on the circuit in the case at bar, that it is only the decisions of the highest court of the State upon the question *of whether a statute ever became a law at all* that will control the Federal courts. On the other hand, the Federal courts are not controlled by the construction put upon a *valid statute* by the State tribunals authorizing the issue of bonds which have come into the hands of innocent purchasers long before the decisions so construing the same, and which declare void negotiable bonds such as these in question.

It was this rule, so laid down by Justice Harlan, that seemed to require the circuit court of appeals, upon the rehearing of this cause, to reverse its former ruling referred to by petitioners. So, as it seems to us, there is no conflict here, really, between the courts.

There is a conflict, however, between this court and the supreme court of North Carolina, if any, because the principles laid down in the Wilkes County case, 180 U. S., 506, by Justice Harlan, are those upon which the Stanly County case, the one at bar, reheard in the circuit court of appeals, and the Wilkes County case, both, were decided in favor of the complainants, bondholders. This case, we submit, should be advanced for argument for the reason, further, that there are other issues of bonds, of hundreds of thousands of dollars, under the law, similar to this issue, where the annual interest has been and is being paid, and about which there is no complaint, in view of the decision of the circuit court of appeals in this case.

That, if this court shall affirm the decision of the circuit court of appeals in this suit, affirming that of Judge Simon-

ton on the circuit, as we must believe it will,
less burdensome upon the people of the county
interest now than to prolong the litigation and
pay it all at once, except this sum of six thousa
already collected and held as a trust fund for th

JOHN F. DILL
HARRY HUBB
CHARLES PRIC
AUG. H. PRIC
Solicitors for Res

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ILLON,
UBBARD,
RICE,
RICE,
Respondents.